

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JOHN ELMY, individually and on)
behalf of all other similarly situated)
persons,)

Plaintiff,)

v.)

Case No.: 3:17-cv-01199

Judge Campbell

Magistrate Judge Frensley

WESTERN EXPRESS, INC., NEW)
HORIZONS LEASING, INC., and)
JOHN DOES 1-5,)

Defendants.)

**DEFENDANTS' PARTIAL MOTION TO DISMISS PLAINTIFF'S
COLLECTIVE & CLASS ACTION COMPLAINT**

Defendants Western Express, Inc. ("Western") and New Horizons Leasing, Inc. ("New Horizons"), by their undersigned counsel, hereby move this Honorable Court, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss Causes of Action II through VII from Plaintiff's Collective and Class Action Complaint ("Complaint") in this matter.

As set forth more fully in Western's and New Horizons' contemporaneously filed Memorandum of Law in Support, this Motion is predicated on the following grounds: (1) Plaintiff fails to plead with particularity his Tennessee Common Law Fraud and Negligent Misrepresentation claims, as required by law; (2) Plaintiff's Tennessee Uniform Commercial Code ("UCC") Lease and Contract Unconscionability claim is improperly pled, as Plaintiff's independent contractor contract with Western and separate leasing agreement with New Horizons do not fall under the UCC; (3) Plaintiff's Tennessee Common Law Unjust Enrichment claim fails

to state a claim because a contract cannot be implied when a valid contract exists; and (4) Plaintiff's Federal Forced Labor and Tennessee Involuntary Labor Servitude claims fail to state a claim and are without merit given the law regarding both causes of action.

Accordingly, this Honorable Court should grant Western and New Horizons' Motion to Dismiss Plaintiff's Causes of Action II through VII with prejudice.

Respectfully submitted,

By:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was electronically filed with the Court and electronically served on date reflected in the ECF system upon:

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